

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 2005-3059-FH

NATHANIEL SHERMAN MARTIN,

Defendant.

OPINION AND ORDER

Defendant Nathaniel Sherman Martin moves to dismiss or for release on personal bond.

I. BACKGROUND

Defendant stands charged with: I. Unlawfully Driving Away a Motor Vehicle contrary to MCL 750.413; II. Third-Degree Fleeing and Eluding a Police Officer contrary to MCL 257.602a(3) and III. Larceny in a Building contrary to MCL 750.360. He waived preliminary examination in the 37th Judicial District Court on July 26, 2005 and was bound over by the Hon. Jennifer M. Faunce. Defendant was put on notice of an enhanced sentence under MCL 769.12 given his three prior convictions.

On August 29, 2005, defendant pled guilty to Count I in exchange for the dismissal of Counts II and III, and a reduction in his habitual sentence from fourth offense to second offense. His plea was taken under advisement and sentencing was set for September 27, 2005.

On September 27, 2005, defendant withdrew his guilty plea and the matter was set for trial on November 8, 2005. On November 8, 2005, trial was adjourned until December 6, 2005 due to the unavailability of the Court.



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On December 6, 2005, defendant's motion for new counsel was granted and trial was rescheduled for January 12, 2006.

On December 29, 2005, defendant—through his new counsel—moved to adjourn the trial date, for reduction of bond, for discovery and to remand for a preliminary examination. Defendant's motion for reduction of bond was denied, for discovery was granted and to remand was granted on January 9, 2006.

A preliminary examination was held April 4, 2006 and defendant was bound over on Counts I and II; Count III was dismissed, his bond was continued and he was again put on notice of an enhanced sentence. He was arraigned April 17, 2006 and trial was set for June 8, 2006.

Defendant now moves to dismiss or for release on personal bond.

II. ANALYSIS

MCR 6.004(C) provides in pertinent part:

In a felony case in which the defendant has been incarcerated for a period of 180 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, or in a misdemeanor case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance, unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community. In computing the 28-day and 180-day periods, the court is to exclude

(1) periods of delay resulting from other proceedings concerning the defendant, including but not limited to competency and criminal responsibility proceedings, pretrial motions, interlocutory appeals, and the trial of other charges,

* * *

(3) the period of delay resulting from an adjournment requested or consented to by the defendant's lawyer,

* * *

(6) any other periods of delay that in the court's judgment are justified by good cause, but not including delay caused by docket congestion.

In the instant matter, defendant was arrested July 12, 2005 on three felony charges. Trial is presently scheduled for June 8, 2006. As of the time set for trial, defendant will have been

incarcerated for 331 days.

However, defendant is responsible for several periods of delay and other periods of delay are justified by good cause: 71 days (August 29, 2005 to November 8, 2005 due to his guilty plea, withdrawal and associated rescheduled trial date), 34 days (December 6, 2005 to January 9, 2006 due to his need for new counsel, requested adjournment and request to remand for a preliminary examination) and 85 days (January 9, 2006 to April 17, 2006 due to his belated request for a preliminary examination—that he then tried to waive on remand—and associated delay until the matter returned to this Court).

Excluding these periods of time, defendant will only have been incarcerated for 128 days.

In addition, defendant is facing an enhanced sentence due to his prior convictions. One of those prior convictions is for escaping from prison. Hence, defendant represents a clear flight risk.

Therefore, defendant is not entitled to release on personal recognizance.

III. CONCLUSION

For the reasons set forth above, defendant Nathaniel Sherman Martin's motion to dismiss or for release on personal bond is DENIED.

This Opinion and Order neither resolves the last pending claim in this matter nor closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

MARY A. CHRZANOWSKI
CIRCUIT JUDGE
Dated: June 7, 2006

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A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
BY: Diane G. Soos Court Clerk

Honorable Mary A. Chrzanowski PS9944
Circuit Court Judge

cc: Eric J. Smith
Macomb County Prosecutor
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